SUPREME COURT OF THE UNITED STATES.

No. 133.—October Term, 1938.

The Baltimore and Ohio Railroad Company, et al.,
Appellants,

vs.

The United States of America, Interstate Commerce Commission, et al., *Appellees.*

Appeal from the District Court of the United States for the Southern District of New York.

BRIEF FOR APPELLEE, THE WAREHOUSEMEN'S PROTECTIVE COMMITTEE.

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TABLE OF CASES CITED.

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OPINIONS OF THE COURT BELOW AND COMMISSION.

The opinion of the Court below, the specially constituted statutory Court (R. 302), is reported at 20 F. Supp. 273, and the concurring opinion of Judge Hulbert (R. 311) at 20 F. Supp. 917.

Three reports of the Interstate Commerce Commission were issued. The case is entitled Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part VI, Warehousing and Storage of Property by Carriers at Port of New York, N. Y. It is an investigation instituted by the Commission on its own motion into practices of carriers by railroad which affect their operating revenues and expenses (R. 25).

The three reports of the Commission are identified as follows:

Propriety of Operating Practices—New York Warehousing, 198 I. C. C. 134, decided on December 12, 1933 (R. 29-115).

Propriety of Operating Practices—New York Warehousing, 216 I. C. C. 291, decided on June 8, 1936 (R. 120-199). This was a report upon further hearing. The case was reopened for this further hearing by the Commission's order of May 6, 1935 (R. 116).

Propriety of Operating Practices—New York Warehousing, 220 I. C. C. 102, decided on February 2, 1937 (R. 269-271). This was a report upon reopening of the case for further argument in response to petitions of the carriers (R. 201-266).

In its report of December 12, 1933, the Commission did not issue an order but did admonish the carriers to discontinue their unlawful conduct and referred to prospective action that it might take under the Elkins Act. 198 I. C. C. 202 (R. 113).

In its second report of June 8, 1936, the Commission referred to actions which it had instituted under the Elkins Act (216 I. C. C. 292 (R. 122)), and it issued its cease and desist order of June 8, 1936 (R. 199-201).

With its third report of February 2, 1937, the Commission issued its order of that date, amending its prior order (R. 272-274). This is the order which is challenged by the appellants in this case.

PRINCIPAL QUESTION PRESENTED

Are the Commission's findings, and its order, as a matter of law, invalid because, instead of permitting the appellants to maintain rates and rents reflective of fair value

and reasonable worth, the Commission restrained the appellants from affording storage and renting property to shippers at rates and rents that fail to compensate the appellants for the costs incurred by the appellants.

STATUTES INVOLVED.

Pertinent statutory provisions are set forth in Appendix A:

STATEMENT OF THE CASE.

This is an appeal from a decree of the District Court of the United States for the Southern District of New York, a statutory court of three judges, dismissing appellants' bill for injunction to set aside and restrain enforcement of the above-mentioned order of the Interstate Commerce Commission. Reference to the three reports of the Commission underlying this order is given above.

The appellants are the trunk line railroad systems that serve the Port of New York District.

This brief is submitted by the Warehousemen's Protective Committee, an appellee. We submit that the Commission's order should be sustained and appellants' petition should be dismissed.

We are speaking for our membership which includes 57 warehouse companies engaged in the warehouse business, both refrigerated and non-refrigerated storage, in the Port of New York District. The names of these companies are set forth in Appendix B hereto. The unlawful conduct of the appellants effected violations of the statutes as found by the Commission and subjected these warehouse companies, herein referred to as complaining warehouse

companies, to unjust discrimination and undue prejudice in violation of Sections 2 and 3 of the Interstate Commerce Act.

The Commission's order is intended to give force to underlying findings that the appellants violated Sections 2, 3(1) and 6(7) of the Interstate Commerce Act. Also the efficiency and economy provisions of Section 15a(2) of that Act.

Appellants' dilemma did not arise from railroad transportation service. In the Port of New York District, the appellants, departing from common carrier functions, elected to engage in the warehousing and commercial storage of property—activities of private business which are beyond the scope of transportation. All of the rates and rents under consideration are rates and rents for non-transportation services or uses. In short, the appellants assumed shippers' services at subnormal rates and rents thereby granting unlawful rebates and concessions and thus influencing the routing of the stored freight over appellants' railroad lines.

What is the foundation for the proceeding designated Ex Parte 104? The carriers, alleging insufficiency of revenues, repeatedly appealed to the Commission to authorize general increases of their freight rates. In one of these cases, *Fifteen Per Cent Case, 1931*, 178 I. C. C. 539, 586, the Commission after approving such increases announced that it would, in a supplementary proceeding, give consideration to instances of dissipation of railroad revenues and hence the proceeding in Ex Parte 104 from which the order in question arose.

Appellants, in their brief, seek to narrow the findings of the Court below and the Commission to bare findings confined to the "costs of service" component of rents and rates. The Commission did not make such attenuated find-

ings. The evidence disclosed wilfully designed violations of the Interstate Commerce Act and Elkins Act. The findings of the Commission dealt with all phases of these violations and with the "below cost" rents and rates as being one of the several components. That appears from the following review of the findings.

Variety of services. We quote from the Commission's reports to show the various kinds of warehousing and storage which the appellants (referred to as respondents in the Commission's reports) elected to engage in in the New York District.

> "At New York respondents now generally store freight on piers owned or leased by them and in warehouses operated by affiliated or subsidiary companies. The forms of title to the warehouses are various. In a number of instances the respondents lease all or parts of buildings for warehousing operations; in others they own the ground, aided in financing the structures located thereon, and lease from their own subsidiaries space in such buildings; and in still others they own the land and structures, but lease them in entirety or in large part to subsidiary corporations for warehouse operations. In the variety of such arrangements the result is always the same, namely, possession and control of warehouse facilities available to serve whatever competitive purposes railroad management may have in mind. These matters will be dealt with more fully when we consider the practices of individual respondents." 198 I. C. C. 138-139 (R. 35).

Ultra transportation activities. The following excerpts, quoted from the Commission's reports, show clearly that the warehousing and storage services under consideration are non-transportation activities beyond the scope of common carriage.

"The term 'transportation' as used in section 1(3) of the act includes the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. Under section 1(4) it is made the duty of every common carrier subject to the act engaged in the transportation of property to provide and furnish such transportation upon reasonable request therefor. While storage of property is clearly within the transportation service which carriers are obligated to furnish, their duty under these provisions extends only to that storage which is necessarily incidental to transporting such property. To be incidental business, the storage must be preliminary either to immediate transportation or immediate removal. *State* v. *Southern Pacific Company*, 52 La. Ann. 1882; 28 So., 372; *Guaranty Claim of Central Elevator & Warehouse Co.*, 72 I. C. C. 169. It is clear that much of the storage service described of record is not such as the carriers are required by the act to furnish." 198 I. C. C. 194-195 (R. 103).

"As stated above, much of the warehousing or storage service under consideration here and the handling necessary in connection therewith is not storage incidental to transportation but is commercial storage. Compare *Merchants Warehouse Co.* v. *United States*, 44 Fed. (2d) 379, affirmed 283 U. S. 501." 198 I. C. C. 196 (R. 104).

"We shall deal first with warehousing operations of the respondents, carried on through railroad departments, subsidiary companies, or affiliated companies, which are in all respects voluntary warehousing activities, such as 'are performed throughout the country by commercial warehousemen under and pursuant to their private contracts, arrangement and dealing with patrons of warehouses.' Prior report, page 139.

"In most cases respondents utilize certain space in their owned or affiliated warehouses, in which storage and services incidental thereto, is provided by them or their subsidiary companies. Other space is rented to shippers for the storing, manufacturing, blending, pro-

cessing, packaging, or distribution of their goods. Storage in some of these warehouses, as provided for in so-called storage-in-transit tariffs, is also conducted by the respondents, but such storage is mentioned only incidentally in this section of the report, and the practices relating thereto are later fully discussed." 216 I. C. C. 294 (R. 124).

There are additional findings to the same effect in the Commission's second report. 216 I. C. C. 348, 349 (R. 188-189). As well stated in that report the business of a railroad is transportation, not storage.

Commercial warehouse companies, non-carrier companies, have performed the commercial warehousing and storage throughout the country for more than 100 years. 198 I. C. C. 137 (R. 34). Departing from this well-established custom and practice the appellants, in the Port of New York District, led by the Erie Railroad Company embarked on a large scale in this field of private business beginning in the years 1927-1929. See 198 I. C. C. 181 (R. 87) and 216 I. C. C. 295, 296 (R. 125).

Gist or gravamen. Certain shippers need and utilize both interstate transportation and commercial storage of their freight. The storage is a component of their selling activities. Thus the aggregate of the charges for the two services is of transcendant importance to the shippers and an undue reduction of the storage charge component is as efficacious as an undue reduction of the transportation charge component. The Commission's reports reveal very clearly that the appellants assumed the commercial warehouse services of selected shippers at sub-normal below cost rates and rents with purpose to reduce the aggregate charges of these shippers for the two services and thereby give them unlawful rebates and concessions. On this point we direct attention to findings made by the Commission as follows:

"The aggregate of the charges for transportation and warehousing or storage influences shippers to route their freight via the railroad and through the warehouse that exacts the lowest aggregate charges for the two services. It is urged that if a railroad affords such warehousing and storage at unduly low rates as an inducement to the routing of traffic via its line, it subjects the independent warehouse companies to unfair competition." 198 I. C. C. 139 (R. 36).

"It is well understood that the controlling fact in the mind of a warehouse patron is the aggregate cost of the transportation and warehouse services, and the assumption of any part of the warehouse charges by the carrier enables the warehouse performing the service to offer rates which complainants cannot meet." 198 I. C. C. 189 (R. 97).

"Although the carriers charge all shippers alike the tariff rates for rail transportation, it is obvious that the according of noncompensatory warehousing charges and rental to some shippers and not to all is equivalent to a deduction from the charges for transportation to some shippers and not to others for like and contemporaneous service. This is clearly prohibited by section 2 of the act. It is likewise clear that the shippers receiving the benefit of such noncompensatory charges are given undue preference or advantage in violation of section 3(1) of the act over shippers who have no need of warehousing or storage, or others who for various reasons are compelled to pay the line-haul rate undiminished by any such benefits." 198 I. C. C. 139 (R. 108-109).

Wrongful motive. The Commission's reports contain findings of the wrongful intent and corrupt purpose attending appellants' invasion of the commercial warehouse business. The Commission said:

"The motive of the carriers in engaging in the commercial business is to induce shippers to use their rail

facilities, and thereby increase the volume of traffic over their respective lines. The lower the aggregate charges for transportation and storage or warehousing services the greater the inducement. Those engaged solely in the warehousing business must depend entirely upon that business for revenue and profit. The rail carriers directly or through dominated and controlled subsidiaries seek out the larger shippers and offer them lower rates for warehousing services and warehouse space than the private warehousemen. It appears of little concern to the railroads that the charges for the warehousing services and space furnished are not compensatory, because they expect to recoup any losses through the revenue derived from rail transportation.

The conflict of interests is not confined to rail carriers and private warehousemen, but concerns also the rail carriers as between themselves. The record plainly shows the struggle between the different rail carriers for supremacy in the matter of inducements without due regard for expenditures and profitableness of the business. The conflict of interest applies also as between larger shippers, controlling sufficient traffic to enable them to use the carrier-controlled warehousing facilities at noncompensatory rates, and smaller shippers who must pay the tariff rates for rail transportation and of necessity use the private warehousing facilities at higher rates than are charged by the carrier-controlled warehouses. It should be borne in mind that certain carrier-controlled warehousing facilities are not available to the general public, but only to selected concerns controlling large volumes of traffic. The tariffs provide that arrangements for storage space for westbound shipments in or on railroad piers or warehouses must be made in advance with respondents, or with outside warehouses if stored therein." 198 I. C. C. 196-197 (R. 105-106).

Dissipation of Railroad Funds and Revenues. Appellants have not undertaken to point out any beneficial re-

sults to the public, themselves or any one emanating from their invasion of the commercial warehouse business. The Commission's reports, written in the light of the efficiency and economy provisions of Section 15a(2) of the Interstate Commerce Act, from which we now quote, show indefensible dissipation of railroad funds and revenues arising from appellants' invasion.

> "The matters and transactions referred to in this report are further illustrations of serious waste resulting from the competition of railroads with each other for traffic. The extent thereof is indicated by the statements contained in appendixes I to III. By referring to appendix I it will be noted that seven of the carriers have expended over $36,000,000 in connection with the warehouse projects considered herein, and appendix II shows the loss incurred thereon during 1931 was over $1,260,441. Appendix III shows the loss per ton of freight stored in-transit ranges from $1.28 to $6.18. These losses are added to by losses incurred on freight stored on railroad piers, and in cars, on insurance premiums, and from loans and advances. The private warehouse interests estimate the total annual losses to be $3,152,119.63." 198 I. C. C. 202 (R. 112).

The Commission also pointed out that a large part of appellants' expenditures on new warehouse facilities were made when the capacity of the existing facilities were largely in excess of need and demand. 216 I. C. C. 295, 296 (R. 125). In other words, railroad funds and revenues were improvidently wasted in producing over-capacity.

The Erie Railroad Company started the improvident venture. 198 I. C. C. 181 (R. 87). The other appellants followed that lead and, although some of them gained a traffic advantage temporarily, in the end when each had matched the other's rebating or concession device the circle was completed and each had the same share of competitive

traffic that it had at the inception of the first device—but all at the lower level of rates to which their warehousing ventures had reduced their published tariff rates. 198 I. C. C. 190-191, 202 (R. 98, 113). New traffic was not created and no beneficial end was realized by the carriers, the public or any person. The Commission said:

> "Whether or not initial advantages may have been realized at one time or another by individual carriers, the result is that a preferred group of large shippers are now the sole beneficiaries, and are so at the expense of the carriers and the general shipping public." 198 I. C. C. 202 (R. 113).

Unjust discrimination and undue prejudice. The subnormal rates and rents of the appellants supplemented by their competition and practices subjected the complaining warehouse companies and others to unjust discrimination and undue prejudice in violation of Sections 2 and 3 of the Interstate Commerce Act. In this respect we direct attention to the following findings of the Commission:

> "Complainants offered testimony and exhibits, neither of which was refuted by respondents, which show that they have lost business in practically every form of warehousing to the respondents' affiliated warehouse and storage companies. They claim that a large part of the value of their warehouse properties has been confiscated and destroyed by the practice of the trunk lines, in what they consider trade activities and not common-carrier service.
>
> The warehousemen claim that participation of the railroads in warehousing is destructive in the same degree to its competitors therein as it would be destructive to manufacturers of any commodity which the railroads might attempt to manufacture, for the reason that the railroads are not dependent on profit arising from their warehouse activities. Complainants also point to the large financial losses of respondents in

their warehouse activities, and to the fact they can use their freight revenues to offset their losses, which the competing warehouses cannot do.

Warehousing and storage are highly specialized businesses, as many commodities must be segregated and many require special equipment in handling. A commercial warehouseman can choose the commodities he wishes to store, as it would not be practicable for any company to build many special commodity warehouses to store any and all commodities offered. The tenor of complainants' testimony was to the effect that the competition of the railroads would ultimately drive independent warehousemen out of business, with the result that railroads would then be called upon to deal in all of the various forms of specialized storage." 198 I. C. C. 190 (R. 97-98).

"Although the carriers charge all shippers alike the tariff rates for rail transportation, it is obvious that the according of noncompensatory warehousing charges and rental to some shippers and not to all is equivalent to a deduction from the charges for transportation to some shippers and not to others for like and contemporaneous service. This is clearly prohibited by section 2 of the act. It is likewise clear that the shippers receiving the benefit of such noncompensatory charges are given undue preference or advantage in violation of section 3(1) of the act, over shippers who have no need of warehousing or storage, or others who for various reasons are compelled to pay the line-haul rate undiminished by any such benefits." 198 I. C. C. 199 (R. 108-109).

"The private warehouse companies are 'persons' within the meaning of that word as used in sections 2 and 3 of the Interstate Commerce Act, and the charges which they are required to pay and the treatment they are accorded by carriers subject to the act are subject to the provisions of these sections, as well as the provisions of the Elkins Act. Compare *Merchants Warehouse Co.* v. *United States*, *supra*. As shippers, they

are to be dealt with in accordance with the provisions of the act." 198 I. C. C. 200 (R. 109).

Costs of Service. The relevancy and great importance of costs of service in the making of rates is axiomatic. The Court below, confirming the conclusions of the Commission, made 44 findings in respect to costs of service relevant to the fixation of rates and rents (R. 358-363, 365-366, 368, 371-373, 375-376, 380, 382-384, 386-388, 390-397, 400-401). This is indicative of the mass of evidence which aided the Commission in making its findings.

SUMMARY OF OUR ARGUMENT.

1. The Commission did not make bare findings that leases of property and the affording of storage by appellants to shippers at rates and rents below appellants' costs of service were unlawful in violation of Sections 2, 3(1) and 6(7) of the Interstate Commerce Act solely because the rates and rents were lower than appellants' costs of service. The findings were much broader in that they disclosed all of the various steps of wilfully designed rebates and concessions and treated the collection of below-cost rents and rates as one of the final steps that consummated the wilful violations of the statute. Accordingly the Commission's order condemns rates for service which fail to compensate the appellants for their costs of performing the service.

2. The Commission's findings reflect appropriate and sufficient consideration of all elements entitled to consideration in the fixation of rates and rents including reasonable worth and fair value. These findings, largely findings of fact, are sound in law and have substantial support of evidence and therefore should not be disturbed by the Court. *Chicago, R. I. & P. Ry. Co.* v. *United States*, 274 U. S. 29,

33-34; *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 663.

3. The appellants have attempted to argue the merits of rates and rents reflecting "fair value" and "reasonable worth" as a question of law divorced from facts and the evidence of record. That mixed question of fact and law cannot be urged in the absence of error assigned to the evidence of record and findings of fact. *Mississippi Valley Barge L. Co.* v. *United States*, 292 U. S. 282, 286; *Edward Hines Yellow Pine Trustees* v. *United States*, 263 U. S. 143, 148.

ARGUMENT.

1. The Findings, Made by the Court Below and the Commission, that the Appellants' Warehousing Rates and Rents must Conform with Appellants' Costs of Service, is Not Error.

In their Point 1 the appellants urge several contentions. They contend that (1) the Commission's findings are confined to imposition of a cost standard in the fixation of warehousing rates and rents, (2) such confinement is error of law in that the Commission should have prescribed "fair value" or "reasonable worth" as the lawful standard for rates and rents in lieu of the cost standard, and, (3) the sole foundation for the violations of Sections 2 and 3(1) of the Act as found by the Commission is the erroneous finding of violations of 6(7) of the Act which are predicated on the invalid prescription of cost of service as a legal standard for warehousing rates and rents. According to appellants' argument all of the many findings made by the Court below and the Commission, and the Commission's order in its entirety, must fall, without any consideration

being given to the evidence of record, under the force of these contentions which are argued as points of law.

As to this first contention, the Commission did not make such bare findings. A brief review of the Commission's reports will readily disclose an exceptionally full and complete recital of details from the inception of each instance of appellants' misconduct. Instead of such bare findings confined to service costs the findings show (a) inception; (b) plan and purpose, (c) wrongful motive, (d) intermediate steps and (f) consummation of the wilfully designed plans to give unlawful rebates and concessions by according the shippers the benefit of subnormal below cost rates and rents at the expense of the appellants.

The Commission's findings and order restrain the appellants from leasing property or affording storage to shippers at rents or rates that fail to compensate the appellants for the costs thereof. But these sub-divisions of the comprehensive findings, which are clearly intended to extract the monetary advantage from the rebates and concessions, should not be deemed to be the whole substance of the findings or to set up a bare cost of service standard for other cases in which the below cost rates or rents are not a component of unlawful rebate or concession devices.

Wrongful purpose—specific intent to give unlawful concessions is stressed in the findings. In such instances appellants' inferences as to extraneous conditions which might justify other below cost rates or rents are irrelevant and immaterial.

Turning to the "fair value" and "reasonable worth" contentions. On their face these terms arise from a factual foundation and appellants have not cited authorities attributing a purely law meaning to these terms. These terms do not provide a foundation for an argument of a

question of law divorced from complex facts. The substance of appellants' argument is a question of fact which appellants are attempting to argue as a question of law divorced from the evidence of record and findings of fact on this very subject.

The Commission dealt with this question as a question of fact. The Commission's reports show that it made a lengthy and exceptionally exhaustive investigation. The proper assumption is that the Commission gave sufficient consideration to every element of rate and rent making that deserved consideration, including reasonable worth and fair value and that assumption is well supported by the references which follow.

The complaining warehouse companies, at an early stage of the investigation, put all elements of rate and rent making in issue. This appears from the following statement quoted from the first report of the Commission in this case:

> "The warehouse interests generally are in accord in contending that respondents' storage rates are unduly low, and that thereby certain violations of law are brought about." 198 I. C. C. 139 (R. 36).

The following quotations from the Commission's reports not only show that the Commission gave appropriate consideration to "reasonable worth" and "fair value" but they also serve to bring out clearly that the contention of the appellants' predicated on these terms is a complex question of fact which, if argued, cannot be argued as a question of law but should be argued in the light of such exceptions to the evidence and findings of fact as the appellants are able to urge:

> "In addition to furnishing warehousing services the rail carriers, or their subsidiaries, also rent space in stations, piers, or warehouse buildings to certain ship-

pers for various purposes, and the rental exacted is not only below the prevailing rates but is noncompensatory." 198 I. C. C. 198 (R. 107).

"It is also the general practice of the respondents (except the Central Railroad Company of New Jersey) to assume liability for actual loss or damage by fire, not to exceed the declared value, at a rate of 8 cents per $100 of value per annum. This is much below the rates ordinarily prevailing for such insurance, and in instances where the carriers reinsure they are compelled to pay a higher rate and bear the difference." 198 I. C. C. 199 (R. 108).

"The New York Central leased to the Mellish Company a warehouse building known as the Old Sheep House and the first and second floors of the building known as the Rossiter Stores at an annual rental of 6.25 cents per square foot of space per annum, which is from one eighth to one tenth of the usual rate obtained for warehouse space in New York City." 198 I. C. C. 176 (R. 81).

"A letter from the president of the Erie to the vice-president pointed out the fact that a loss of $83,866.65 had been sustained in the expense of labor and storage of 46,693 tons in these (Lorillard and Ault-Wiborg) buildings in 1931. This amounted to $1.80 per ton. Inquiry was made, 'How long have the present storage and handling charges been in effect? Is there any reason why they should not be increased to more nearly cover the expense?' The vice-president replied:

> These tariff charges have been in effect without change for a number of years. . . . They are less than warranted by regular commercial warehouse storages but contemplate revenue consequential upon road haul movement of traffic. While these low rates have been complained of by private warehouse owners there has been no way found as yet for advancing them." 198 I. C. C. 186 (R. 93-94).

"The record shows that the Erie has paid the U. S. Trucking Corporation 6 cents or more 100 pounds for trucking goods to the Independent Warehouses, Incorporated, which were stored by the latter company in its warehousing business. Patrons of these warehouses may thus route their traffic over the Erie at a cost 6 cents or more per hundred pounds lower than shippers who patronize commercial warehouses which do not have the advantage of the railroad paying for the trucking thereto. The result is that business has been diverted to the Independent Warehouses, Incorporated, from other competing commercial warehouses." 198 I. C. C. 187 (R. 94).

"The vice president of the New York Central . . . expressed the opinion that any losses sustained in terminal operations might well be met out of revenue derived from all of the line-haul traffic, and cited competition for traffic among the carriers as one of the reasons for building warehouses and the measure of the charges for storage." 198 I. C. C. 191 (R. 99).

"The vice president of the Lackawanna . . . testified that it is reasonable to conclude that the only reason for the Lackawanna's low charges for westbound storage was the competition of other carriers. The witness, speaking of the low charges, stated: 'I don't think any one can say that there is any money to be made out of this, . . . there is no use to beat around the bush, this storage over here does not pay its way.'" 198 I. C. C. 191 (R. 99).

"The rail carriers directly or through dominated and controlled subsidiaries seek out the larger shippers and offer them lower rates for warehousing services and warehouse space than the private warehousemen. It appears of little concern to the railroads that the charges for the warehousing services and space furnished are not compensatory, because they expect to recoup any losses through the revenue derived from rail transportation." 198 I. C. C. 197 (R. 105).

"While some changes in the practices and charges were made before and subsequent to the issuance of the prior report, most of the practices and charges therein condemned have not been corrected. The present practices and charges, as later shown, result in heavy losses not only to respondents, but also to competitive commercial warehouse companies . . . this excess capacity and resulting competition have reduced the cold-storage warehouse rates for handling and storage to subnormal levels." 216 I. C. C. 295 (R. 125).

"Because of the competition it is difficult, if not impossible, to adhere to any fixed standard of rates for storage or the rental of space." 216 I. C. C. 296 (R. 126).

"The Kraft company through its control of a large volume of traffic, has, since January 1929, been able at all times to obtain space for its operations at rates which are wholly noncompensatory to the railroads' warehouse companies. The granting of concessions by carriers through the leasing of space at rentals less than its fair value is as unlawful as any other form of rebating." 216 I. C. C. 308 (R. 141).

"At the further hearing a warehouse operator who is a shipper in interstate commerce testified that the competitive situation between the independent warehouses and the railroad warehouses had become progressively worse since the prior hearing, that the Central Warehouse Company is among his competitors, and that shortly before the later hearing his warehouse had lost considerable business to the Central Warehouse Company because the latter's rates were cut to a point where they could not be met by his company. He further testified that his rates were not abnormally high to begin with, and that he offered to lower them, at first 10 percent and eventually 20 percent, in order to retain the business, but that the Central Warehouse Company obtained the business by

offering storage rates and handling charges, averaging 48.47 and 63.74 percent, respectively, below the storage rates and handling charges of his company." 216 I. C. C. 322-323 (R. 158).

"The record is conclusive that through existing arrangements the respondents have provided flour-storage space at less than cost. In fact, it was testified at the former hearing that, through the practice of respondents in leasing their storage facilities to trucking or stevedoring companies, it is possible for flour merchants in New York City to avoid bearing any expense for such storage. Under such circumstances it is of course clear that the operators of commercial warehouses are unable to compete successfully for the business of storing flour." 216 I. C. C. 338 (R. 176-177).

"The arrangements, therefore, must be construed as a device to purchase traffic through the rental of space at noncompensatory rates, and by the payment of allowances for services which are a part of the commercial activities of those companies. The testimony shows, and it is almost self-evident, that commercial warehousing companies engaged in the storage of automobiles received in carload lots by rail are unable to successfully compete for that business when faced by the competition of the storage companies subsidized by the New York Central." 216 I. C. C. 331 (R. 168).

The unsuccessful efforts of the B. & O. Railroad Company to maintain commercial storage rates, when faced by the "cut-throat" competition of the other appellants is vividly portrayed in this record. 198 I. C. C. 147-149; 216 I. C. C. 298-302 (R. 45-48, 129-134). Consideration of that losing struggle of the Baltimore and Ohio is persuasive of the view that an order of the Commission licensing these competing carriers to establish rates or rents reflecting the judgment of their traffic departments as to fair value or

reasonable worth instead of arresting would stimulate their unlawful efforts. It is very plain that the case in hand is one in which the findings and order of the Commission must bar rates and rents that fail to compensate the appellants or there will be no limitation of the descent of appellants' subnormal rates and rents.

From the findings it appears that the appellants, departing from their common carrier functions, at a recent time invaded the warehouse business. Their purpose was to buy traffic, in competition with each other, by utilizing this private business to convey rebates and concessions to shippers. The inevitable outcome of such misuse of the warehousing business would be a progressive and continuing reduction of rates and rents which cannot be arrested except by a cost of service barrier. Descent below the rate standards of the competing private warehousemen and all other respectable standards was and is inevitable because the schemes of the railroads would not accomplish the buying of traffic unless and until the appellants transformed warehouse rate and rent structures into instrumentalities that yielded the essential rebates and concessions. Under the deplorable conditions created by the appellants, who now dominate the New York warehouse market, any rates and rents which the appellants elect to impose are prevailing, fair value or reasonable worth rates or rents conforming with appellants' doctrine.

Two conclusions are inescapable. The Commission cannot compel any corrective action of substance except through incorporation, in its findings and order, of the condition or limitation which is challenged by the appellants. The removal of that limitation by the Courts will license the appellants to continue and augment every phase of their

reprehensible practices which were condemned by the Commission.

The appellants have not shown a scale of rates or even one rate which they deem to be reflective of "fair value" or "reasonable worth." Their argument left us uninformed as to any level of rates which they may have in mind.

As the Commission gave appropriate consideration to every element of rate and rent making that deserved consideration no grounds for setting up this collateral attack upon the findings and order are available. The appellants had their opportunity to urge this issue in the proceedings before the Commission and if they failed to embrace it they cannot raise the issue *de novo* now. *United States* v. *Northern P. R. Co.*, 288 U. S. 490, 494. We very earnestly insist that the appellants can have no recognizable grounds for raising this complex question of fact and law except through specific assignment of error to findings of fact. *Mississippi Valley Barge L. Co.* v. *United States*, 292 U. S. 282, 286; *Edward Hines Yellow Pine Trustees* v. *United States*, 263 U. S. 143, 148. On page 7 of their brief they expressly disclaim such grounds.

The findings and order of the Commission being sound in law and having substantial support in evidence should be sustained by this Court. *Chicago, R. I. & P. Ry. Co.* v. *United States*, 274 U. S. 29, 33-34, *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 663.

Passing now to the third contention urged under appellants' Point 1. According to our understanding the appellants argue that any concession or rebate cannot have the effect of reducing carrier rates below the published tariff scale, in violation of Section 6(7) of the Act, unless the rebate or concession is of substantial and measurable value to the shipper to whom the rebate or concession is given. Thus, as argued by the appellants, the below cost finding

which applies only to a condition affecting the carrier, is insufficient in law to make out a violation of Section 6(7) of the Act.

Appellants' argument is untenable. The Commission's reports and findings repeatedly show the amounts of rebates and concessions which are of great value to the preferred shippers. The figures are set forth many times in the Commission's reports in dollars and cents per ton of freight handled or stored and in total amounts for specified periods of time. And there are several instances in which large amounts of shippers' rents and shippers' insurance premiums which were improperly assumed by the appellants, are stated in dollars and cents. A suggestion that the assumption by the appellants of shippers' warehousing services, rents and insurance premiums conveyed nothing of value to the shipper would be palpably absurd and contrary to the unchallenged findings of fact. Surely the appellants would not undertake such radical departure from common carrier functions unless the innovation provided ample inducements and conveyed value sufficient to buy the shippers' traffic.

Turning now to the wording of the statute. The test of legality set up by Section 6(7) of the Act, is not directed to effects upon the shipper. If the device or practice reduces the carriers' published rates that effect upon the carrier consummates the violation.

In *United States* v. *American S. & T. Plate Co.*, 301 U. S. 402, this Court gave consideration to violations of Section 6(7) of the statute arising from the assumption by common carriers of the performance of shippers' switching services. In short, the carriers stretched their regular rates for transportation beyond the scope of common carriage to cover certain shippers' services, thereby violating Section 6(7) of the Act. The violations of this section in the case

in hand are more aggravated. The assumption by the appellants of large portions of shippers' commercial warehouse expenses, rents and insurance premiums as an inducement which influenced the shippers to route their freight traffic over the lines of the appellants is a clear cut reduction of appellants' filed tariff rates in violation of Section 6(7) of the Act. No other form of rebate or concession could be more efficacious or pernicious. The practice is an adroit and facile method of rebating through which the rebate can be made as large or small as the carriers and preferred shippers desire.

One more contention of the appellants, under their Point 1, remains for discussion. Appellants contend that the only foundation for the findings of violations of Sections 2 and 3(1) of the Act is the erroneous finding of violations of Section 6(7) of the Act. We have shown that error is not attributable to the findings last mentioned. Appellants' rates to or from the preferred warehouse operations are reduced below the filed tariff level by appellants' assumption of a large part of the shippers' warehousing expenses. Appellants imposed their unreduced filed tariff rates on the traffic of the competing warehouse company. The resulting inequality of rates for like transportation service affords ample foundation for consideration of the additional factors of discrimination.

The Commission made comprehensive findings of unjust discrimination against, and undue prejudice to, the many complaining warehouse companies, in violation of Sections 2 and 3(1) of the Act. These findings are sufficiently outlined in our statement of the case. In its report the Commission mentioned the failure of the appellants to refute our evidence of unjust discrimination and undue prejudice. And that is their position here—they argue the issue of unjust discrimination and undue prejudice without even

referring to these findings or the serious injury to the business of the complaining warehouse companies.

2. The Findings that the Appellants Store Goods for Shippers at Less than Costs of the Service are Sufficient in Law.

In their Point 2 the appellants argue that the Commission made bare findings that appellants' rates for storage being below costs of service levels were, for that reason alone, unlawful under the Interstate Commerce Act. Appellants urge that the findings are insufficient in law.

The Commission did not make such attenuated findings. The Commission dealt with the corrupt inception and purpose of the subnormal storage rates and condemned the "below cost" rates as one of the steps which consummated the giving of unlawful concessions in violation of the statute. Our argument of appellants' Point 1 will serve to answer appellants' Point 2.

3. The Fact that Appellants Published some of Their Rates for Non-transportation Storage in their Filed Tariffs does not Alter the Substance or Change the Law.

The appellants urge several contentions under their Point 3. Their Point 3 is confined to rates for storage published in their filed tariffs. Their Points 1 and 2 dealt with rents and rates for storage that were not published in their filed tariffs.

We have hereinbefore discussed all of the points urged under appellants' Point 3 except storage in transit and the tariff publication of storage rates. Our position is that the publication in appellants' filed tariffs of rates for the so-called in-transit storage, which is not transportation serv-

ice, does not distinguish that class of storage from the mass of similar storage, argued in appellants' Points 1 and 2, for which the appellants did not file any tariff rates.

Appellants' argument suggests that the term "storage in transit" indicates that such storage is customarily embraced in transportation service. The term does not have that significance. Storage in transit, like milling in transit, is an activity of private business performed for the benefit of manufacturers, traders or others. The railroads merely outline a transit privilege and period in their tariffs and the traders or other private business concerns perform the trade activities during the transit period. The assumption of storage by the railroad companies during the transit period is as foreign to transportation as the assumption by them of the grinding of grain or the sawing of lumber during transit periods would be.

On the point under discussion the Commission said:

> "Storage in transit permits the stopping of goods at an intermediate point en route and the reshipping therefrom to final destination at the through rates instead of the higher combination of local rates, to and from the transit point, which would obtain if the transit privilege was not granted. The transit privilege ordinarily is for the purpose of permitting some milling, manufacturing, or other trade process to be performed to the goods during the transit period.
>
> Each of the seven trunk-line respondents provide transit rules and rates for the storage of westbound freight at their warehouses in the Port of New York district, but these rules and rates vary greatly from the generally accepted storage-in-transit practices in the following particulars. The owners of the stored freight may, and oftentimes do, sell it locally, remove it by trucks or other means, withdraw it from consumption at any time or in any quantity by means suiting their business needs or inclination. Furthermore, if

the goods remain in storage beyond the time limit imposed for in-transit storage the rates for storage remain the same as applied during such period. In the particulars named the storage partakes of the nature of commercial storage, and the storage involved is not, properly speaking, in-transit storage. The fact that it is designated as such in the carriers' tariffs does not invest it with the characteristics of in-transit storage." 198 I. C. C. 196 (R. 105.)

"It should be borne in mind that certain carrier-controlled warehousing facilities are not available to the general public, but only to selected concerns controlling large volumes of traffic. The tariffs provide that arrangements for storage space for westbound shipments in or on railroad piers or warehouses must be made in advance with respondents, or with outside warehouses if stored therein." 198 I. C. C. 197 (R. 106).

Contrary to appellants' argument the Commission again, in its third report, held that the storage in question is not a component of railroad transportation service. The Commission said:

"What is here condemned is the fact that the respondents have voluntarily engaged in storage and warehousing services which are not within their common-carrier obligations and, by providing such services to shippers below the cost of such services, reduce the cost to such shippers for the transportation of their goods. The tariffs now on file are instruments which work violations of the act in that, through them, respondents hold themselves out to perform commercial services (under the guise of performing transportation services) at rates and charges which fail to compensate respondents for the cost of performing them, and thereby violate sections 2, 3, and 6 of the act." 220 I. C. C. 103-104 (R. 271).

It appears from the above quotations that the Commission, upon the evidence of record, found that the so-called

in-transit storage was not railroad transportation service and that appellants' tariffs did not transform the trade service in-transit storage into common carrier transportation service. The Commission also pointed out that appellants' tariffs did not offer such storage services to the general shipping public but purported to confine the services to selected shippers. Other decisions are to the effect that writings in railroad tariffs will not alter facts or established law. *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501, 508, 511; *North Packing & Provision Co.* v. *C. M. & St. P. Ry. Co.*, 80 I. C. C. 737, 740; *A. T. & S. F. Ry. Co.* v. *Kansas City Stock Yards Co.*, 33 I. C. C. 92.

The Commission's statutory authority to prescribe rates does not apply to rates for non-transportation services. It cannot entertain a complaint directed to such rates nor fix the measure of such rates. And there is no statute which compels the appellants to adhere to such rates even when the rates are printed in appellants' filed tariffs. The Commission cannot make any use of such tariffs, which are impotent and virtually worthless.

In its third report in this case the Commission permitted the appellants to incorporate rates for the so-called in-transit storage in their filed tariffs. But as indicated in the above quotation from that report the Commission reiterated its finding that the services were non-transportation services. In exceptional cases the Commission will permit carriers to incorporate rates for non-transportation services in their filed tariffs for the purposes of affording information. The Commission's views on this point are well stated in *Tariffs Embracing Motor Truck or Wagon Transfer Service*, 91 I. C. C. 539, 548-549, from which we quote as follows:

> "In the interest of simplicity of tariffs, it has been our practice to discourage publication in tariffs of mat-

ter other than that necessary to comply with the act and our regulations. However, in view of the circumstances surrounding the motor-truck, water, and rail transportation under consideration, carriers may, if desired, include in their tariffs naming rates to or from New Haven the charges of motor trucks for the service from such inland points to New Haven, provided such charges are separate from the charges subject to the act. . . . Nothing here said should be construed as general authority to carriers subject to the act, as generally it is undesirable to complicate tariffs by including therein foreign matter, and each case should be determined by its particular circumstances."

The incorporation of rates for the non-transportation storage service in appellants' tariffs is immaterial. The findings of the Commission on this point are conclusive. *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501, 508; *Terminal Warehouse Co.* v. *United States*, 31 F. (2d) 951, 957. Our argument of appellants' Point 1, therefore, applies with like force to the contentions of appellants' under their Point 3.

4. The Commission's Order will not Deprive Appellants of their Liberty and Property.

In their Point 4 the appellants argue that the Commission's order will deprive them of their liberty and property in contravention of the Fifth Amendment to the Constitution of the United States.

Appellants' argument is unique. It is the first instance coming to our attention in which the Fifth Amendment has been invoked to enable any party to continue to carry on business at rates or selling prices below costs.

On its face appellants' contention is self-contradictory. They need a record of evidence to lift their Point 4 from the

self-contradictory stage—that is, evidence which will prove that below cost rates may be profitable under certain exceptional circumstances. Here again we insist that appellants are foreclosed by their action in expressly refraining from challenge to the evidence and findings of fact.

Appellants' argument is inconsistent. No constructive or beneficial purpose was served by their invasion of the commercial warehouse business. With indifference to the destructive effect of their invasion upon the property and established business of the many private business concerns who had been lawfully engaged in that business for many years in the New York District, the mandate of these powerful railroad corporations was and is that no one can have the competitive part of that business except at rates and rents below costs of service. In short they deprived the competing non-railroad warehouse companies of the opportunity to obtain any profit or fair return on their warehouse properties or their established business. And we are confronted with appellants' paradoxical argument that the Fifth Amendment to the Constitution licenses them to continue this confiscation and destruction of the property and going business of these many non-railroad warehouse companies.

If the appellants may invade and thus destroy the commercial warehouse business they may also invade and destroy the refinery, manufacturing, wholesaling, retailing and all other kinds of private business that is dependent on them for essential transportation service.

5. The Appellants Ignored the Efficiency and Economy Provisions of the Statute.

The Commission made important findings in recognition of the efficiency and economy provisions of the Interstate Commerce Act. See 198 I. C. C. 202 (R. 113).

The appellants and other carriers have appealed to the Commission repeatedly to authorize general increases of their rates. In one of these cases, *Fifteen Per Cent Case, 1931*, 178 I. C. C. 539, 585-586, after authorizing the increases, the Commission said:

> "The new competitive conditions make it necessary, also for the railroads to cooperate more efficiently with each other and reduce the waste, both in service and in rates, which has marked their own competition. That this waste is of very large proportions is clear. Many specific instances have been brought to our attention. That it can be minimized we also have no doubt, but that this will require a greater degree of cooperation than the railroad executives have yet been willing to put into practice is plain. Such cooperation, which we believe the times make essential, would also be of great advantage in carrying on adequate research and experimentation." (178 I. C. C. 585.)
>
> "In the meantime we have under way an investigation, Ex parte No. 104, into such railroad practices as may adversely affect net earnings, and we shall pursue this inquiry with diligence." (178 I. C. C. 586.)

The foregoing outlines the foundation of the proceeding in Ex Parte 104 from which the order challenged by the appellants emanated. Undoubtedly the dissipation of funds and revenues of these common carriers in non-transportation ventures is of great importance especially in the light of the Commission's duty in authorizing general increases of transportation rates and approving Government loans to these carriers.

The provisions of Section 15a(2) of the Interstate Commerce Act, relating to efficiency and economy in railroad management, are mandatory and must be given effect by the Commission. It may be assumed that the Commission's findings will compel rates and rents which are fair when

tested by these and the other pertinent provisions of the statute. Appellants' argument ignores the findings under these important provisions of the statute.

Conclusion.

When summarized the contentions of the appellants are a moot or theoretical argument of so-called fair value rate and rents supplemented by an argumentative and unfair curtailment of the Commission's comprehensive findings. This combination does not warrant annulment of the many well-grounded findings of the Court below or the Commission's findings or order in any respect.

The petition should be dismissed with costs upon appellants.

Respectfully submitted,

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APPENDIX A.

The following are the portions of sections 2, 3, 6 and 15a of the Interstate Commerce Act involved in this case:

Sec. 2. (U. S. Code, title 49, sec. 2.) That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Sec. 3. (U. S. Code, title 49, sec. 3.) (1) It shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic, in any respect whatsoever or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Sec. 6. (U. S. Code, title 49, sec. 6.) (7) No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this part, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

Sec. 15a. (U. S. Code, title 49, sec. 15a.) (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of

rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.

APPENDIX B.

COMPLAINING WAREHOUSE COMPANIES LISTED IN EXHIBIT No. 150.

(A) indicates operators of non-refrigerated warehouses.
(B) indicates operators of refrigerated and non-refrigerated warehouses.
(C) indicates operators of cold storage warehouses.

Name	Location of Warehouse
(A) Vestry Warehouse, Inc.	Manhattan, N. Y.
(A) Mercantile Warehouse Corporation	Manhattan, N. Y.
(A) White Warehouses, Inc.	Manhattan, N. Y.
(A) Security Storage Warehouse	Harrison, N. J.
(A) Metropolitan Warehouse Co., Inc.	Carlton Hill, N. J.
(B) Hall St. Cold Storage Warehouse, Inc.	Brooklyn, N. Y.
(C) Loomis Cold Storage Co.	Manhattan, N. Y.
(C) Greenwich Refrigerating Co., Inc.	Manhattan, N. Y.
(A) Bowne-Morton Stores, Inc.	Brooklyn, N. Y.
(B) Butlers Warehouses, Inc.	Brooklyn, N. Y.
(B) India Wharf Storehouses	Brooklyn, N. Y.
(A) South Eleventh St. Warehouse Corporation	Brooklyn, N. Y.
(A) Waterfront Warehouse & Terminal Corp.	Brooklyn, N. Y.
(B) Bronx Refrigerating Co.	Bronx, N. Y.
(C) Brooklyn Bridge Freezing & Cold Storage Co.	Manhattan, N. Y.
(A) Continental Milling & Warehouse Co., Inc.	Staten Island, N. Y.
(C) Fulton Market Refrigerating Co.	Manhattan, N. Y.
(A) W. R. Royce & Son, Inc.	Manhattan, N. Y.
(C) Heermance Storage & Refrigerating Co.	Manhattan, N. Y.
(A) Harper Bros., Inc.	Hackensack, N. J.
(A) Reisch Trucking & Trans. Co., Inc.	Morsemere, N. J.
(A) Campbell Stores	Hoboken, N. J.
(A) Elasticap Company	Hoboken, N. J.
(B) Jersey City Cold Storage Co., Inc.	Jersey City, N. J.
(C) Merchants Refrigerating Company	Manhattan, N. Y.
(C) Merchants Refrigerating Company	Jersey City, N. J.
(C) Merchants Refrigerating Company	Newark, N. J.
(A) Baker and Williams	Manhattan, N. Y.
(C) National Cold Storage Co., Inc.	Brooklyn, N. Y.

Name	Location of Warehouse
(B) National Cold Storage Co., Inc.	Jersey City, N. J.
(C) Union Terminal Cold Storage Co., Inc.	Jersey City, N. J.
(C) Kings County Refrigerating Co.	Brooklyn, N. Y.
(C) Manhattan Refrigerating Company	Manhattan, N. Y.
(A) Lincoln Terminal Corporation	Kearney, N. J.
(A) Essex Warehouse Co.	Newark, N. J.
(A) Lehigh Warehouse & Transportation Co., Inc.	Newark, N. J.
(A) Long Island Storage Warehouse, Inc.	Brooklyn, N. Y.
(A) Rex Warehouses, Inc.	Manhattan, N. Y.
(A) Sunset Warehouses, Inc.	Manhattan, N. Y.
(B) Terminal Warehouse Co.	Manhattan, N. Y.
(A) John B. Hobby Sons Co.	Manhattan, N. Y.
(B) A. B. C. Warehouse Co	Manhattan, N. Y.
(A) Port Warehouses, Inc.	Manhattan, N. Y.
(A) Shephard Warehouses, Inc.	Manhattan, N. Y.
(A) Henry I. Stetler, Inc.	Manhattan, N. Y.
(C) Stevenson Refrigerating & Storage Co., Inc.	Manhattan, N. Y.
(A) Charles C. Tough Warehouses, Inc.	Manhattan, N. Y.
(A) Towers Warehouses, Inc.	Manhattan, N. Y.
(C) United Refrigeration & Terminals Co., Inc.	Manhattan, N. Y.
(A) Commercial Stores, Inc.	Manhattan, N. Y.
(A) North River Stores, Inc.	Manhattan, N. Y.
(A) Hoboken Dock Co.	Hoboken, N. J.
(A) U. S. Testing Co., Inc.	Hoboken, N. J.
(A) Globe Fireproof Storage Warehouse Co.	Manhattan, N. Y.
(C) Atlantic Coast Fisheries Co.	Manhattan, N. Y.
(A) Coulter & Coulter, Inc.	Jersey City, N. J.
(C) Loewer Cold Storage Corp.	Manhattan, N. Y.
(A) Mulligan Midtown Warehouse, Inc	Manhattan, N. Y.
(C) Standard Cold Storage Corp.	Manhattan, N. Y.